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ABSTRACT

This report on a preventive law institute held in Texas in 1981 includes an introduction, three papers, a summary of discussions, and a concluding statement. In the introduction Christiane Hyde Citron defines preventive law as decision making that takes constitutional and case law into consideration and that includes four basic steps: (1) anticipation of legal challenges; (2) evaluation of legal merits of challenges; (3) consideration of policy issues raised by potential challenges; and (4) modification in response to the first three steps. In "State Regulation of Textbook Selection and Private Schools," Mark Yudof cautions that educational law is crisis oriented, constitutional law is fuzzy, and the public sector lacks market constraints. As a result, more constitutional challenges to school library and textbook decisions have occured during the past 10 years than in the previous 100 years. Outlined are the basic regulations for textbook selection; court decisions are cited, and recommendations are made for established, fair procedures to avoid court litigation. State education agencies must apply evenness of control and equal application of rules toward public and private schools. "Advocates Perspective on PL 94-142", by Jim Todd, presents the perspective of the suer in handicapped student litigation. This is usually a publicly funded advocacy agency which has an interest in resolving conflicts without litigation. A list of suggestions to prevent handicapped student litigation is provided. James Deatherage, in "School Districts Perspective on PL 94-142," outlines the legal framework governing the education of the handicapped; the sources and causes of conflicts; preventive actions; and alternative approaches for preventing litigation. "Group Interaction and Consensus Building" summarizes the major topics of discussion during the institute. In the concluding statement the practice of preventive law is presented as an important tool with which educators can control their futures. (MD)

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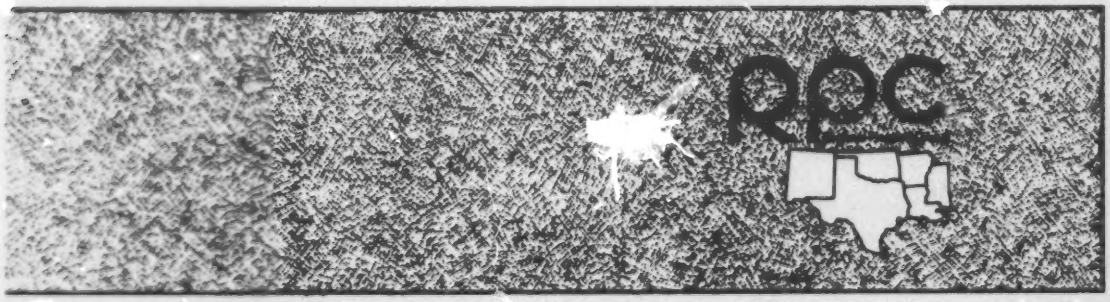

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EDUCATIONAL PREVENTIVE LAW INSTITUTE

Edited
by
Pam Autrey

Report of an Invitational Institute

November 12, 1981
Hyatt Regency Houston
Houston, Texas

SOUTHWEST EDUCATIONAL DEVELOPMENT LABORATORY
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PREFACE

This report represents both a promising beginning and an exciting culmination.

The ground work for the Preventive Law Institute began in the summer of 1980 when then-NIE director Michael Timpane, California State Department of Education chief counsel Thomas Griffin, and former staff member Agnes Toward communicated on the need for proactive planning for legal problems. They recognized the importance of developing policies to implement and maintain mandated programs "with the least degree of legal risk." They inspired this Institute.

Horizon-watching and problem-sensing are the business of all planners. Education being no exception, we must be aware of the time-consuming and costly crises caused by legal entanglements. While the issues discussed here are sensitive and complicated, participants at the Institute express interest in on-going awareness.

For facilitating the Institute, I thank Conference Coordinator Cynthia Levinson and for the smoothness of its operation, Lynn Dawson, Logistics Coordinator. Pam Autrey, as always, has done an outstanding job editing this report.

Martha L. Smith, Director
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JAMES TODD prepared for his position as staff attorney at Advocacy, Inc. and his work with developmentally disabled persons through both legal training at the University of Texas and attendance at the University of Houston Graduate School of Social Work. He has taught on Law and the Handicapped and Law and Psychology.

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INTRODUCTION: DEFINING PREVENTIVE LAW

by CHRISTIANE HYDE CITRON
Senior Attorney, Education Commission of the States Law and Education Center

Preventive law is both a philosophical orientation and a pragmatic point of view. It means decision-making which takes constitutional and case law into consideration. Preventive law requires cooperation among at least the following groups:

1) lawyers - who must be advocates;
2) administrators - who must understand constitutional law;
3) universities - which must train administrators in constitutional law; and
4) the Supreme Court - which should make coherent rulings that are intelligible enough to permit clear policy making.

There is an old saying prevalent in the legal community - "The best attorney never goes to court." There is another aphorism often heard in the non-legal community, "An ounce of prevention is worth a pound of cure." They mean the same thing; that is, a good attorney keeps his or her clients out of trouble. It may be that the private sector achieves this goal better than the public sector. The private sector often operates on a much more generous budget. At the same time, legal and constitutional constraints in the public sector have become more complex, with the result that attorneys serving the public sector may be forced to develop new styles of lawyering to cope with the task of keeping government agencies "out of trouble."

However, the practice of preventive law in the public sector is aimed at doing more than keeping government agencies out of trouble. Educators should not have to surrender to lawyers decision-making in important policy areas merely because the issues have constitutional ramifications. The premise of preventive law is a process of demystification: showing that legal concepts are not mysterious and remote, intelligible only to lawyers. In preventive law, it is assumed that laymen can, and should, understand constitutional principles, and that the attorney should assist the layman in reaching this understanding. It is much more efficient for all parties concerned if problem areas are taken into consideration at the formative stage of policy-making rather than after the fact. Not only efficiency, but the quality of decision-making suffer when legal analysis is relegated until the time of litigation.

When policy problems are not dealt with early on and are left to be resolved in litigation, decisions usually end up being made under great external pressure, without opportunity for comprehensive analysis of available options. If the government and its public decide to go to court, the situation changes. Positions usually become polarized, and all sides lose considerable control over the resolution of their differences. Anyone who has been involved in litigation knows how expensive, time-consuming and painful that process can be for everyone involved. Of course, some litigation is unavoidable. Yet, much seems preventable if the parties were to devote more of their attention and resources to preventive law, focusing on potential legal problems at the policy formulation and implementation stages. This is especially the case in public

education where continuing litigation between students and school authorities has contributed to an increasing legalization of education policy. Educators who lament judicial intrusion into education can minimize the need for outside interference through careful examination of constitutional implications early in the policy-making process. In many cases, policies could be modified to safeguard the rights of students or others without disturbing the underlying policy goal. Yet, these modifications could go far toward obviating litigation.

Consequently, the Law Center at the Education Commission of the States believes that there is a great need for comprehensive attorney review of sensitive proposed education policies. We believe lawyers should help administrators be informed on constitutional law so that control of the decision-making process can remain in the hands of the educational decision-makers. This does not mean that administrators should act as their own lawyers nor does it mean they should call a lawyer before every move they make. The lawyer should help the administrator learn to distinguish a policy issue from a legal issue, and advise the administrator only regarding the legal issues. The Law Center at the Education Commission of the States seeks to practice preventive law by disseminating new and developing legal principles to education policy makers and by providing specialized, in-depth legal analysis to their attorneys. Education leaders are then more able to identify occasions when a specialized attorney should be consulted. The Law Center believes this service assists education policy makers in better formulating policy that is less likely to cause subsequent legal problems.

Preventive legal review includes four basic steps: (1) anticipation of legal challenges; (2) evaluation of the legal merit of these challenges; (3) consideration of the policy issues raised by potential challenges, and (4) modification, where appropriate, in response to the first three steps. This kind of preventive legal review is important for a number of reasons. First, extensive case and statutory law at both the federal and state levels now provides an elaborate legal framework within which the education process must function. Second, a national network of legal services attorneys and other groups concerned about the civil rights of students exists to enforce the rights guaranteed by this extensive case and statutory law.

The Law Center's role is to assist state education policy makers in the process of applying a preventive law analysis to new programs initiated at the state or local level, prior to final policy formulation and implementation. The Law Center performs this function through technical assistance, research and publications. The way in which educational policy makers get legal input varies tremendously from state to state. Although little is known at present about the exact effect legal input has on educational policy, the Law Center believes that the earlier the legal input is received, the better the policies.

STATE REGULATION OF TEXTBOOK SELECTION AND PRIVATE SCHOOLS

by Mark Yudof
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Before actually discussing state regulation of textbook selection and private schools, it is first useful to consider some issues regarding preventive law.

First, we should mention that educational law is very crisis oriented; it usually does not involve much planning ahead. Constitutional law is a very unusual kind of law--it is fuzzy, defused with policy, and hard to predict. Second, the public sector lacks market constraints. Litigation is usually done by public school systems with taxpayers' money. Also, citizens who bring litigation may not have the normal client-attorney relationship which acts as a constraint in normal lawsuits. Third, there is nothing to prevent anyone from filing a lawsuit. Preventive law is primarily common sense. It is the process of anticipating problems, establishing procedures, and following those procedures.

Regulation of Textbook Selection

I. Introduction.

Over the last ten years, there have probably been more constitutional challenges to public school library and textbook decisions than in the previous 100 years. According to a survey conducted by the American Association of Publishers and the American Library Association, one out of five local school systems had such

challenges during the 1978-80 school years. I suspect that there are many reasons for this increase. Resolution of disputes in the public schools is increasingly dominated by rules and formal procedures and legislation and lawsuits, and it is natural that the legalization apparent with regard to collective bargaining, student records, desegregation, treatment of the handicapped, and the like, should spill over into the textbook area. Public opinion polls also show a declining confidence in professionals and public officials, and many are perhaps less accepting of decisions made by experts or elected school representatives. This is particularly true if one is a member of a minority or a previously "silent" majority which feels that curriculum, textbook, and other school decisions do not reflect their preferences.

With the decline in the view that public schools are above politics, the dissensus in values that pervades in so many areas--for example, the role of women, scientific creationism, or religious values -- may result in an increased willingness of the losers in the political process to do battle in the courts. This is particularly evident in the movement to dismantle whatever barriers that have "separated government from personal morality and religion." As the Public Agenda Foundation put it in a recent study,

> This mode of thinking can be seen...in increasing demands for "reviews" of school textbooks. Many Americans have come to feel that the state cannot be neutral to questions of lifestyle; they believe that the forces of government should be harnessed to bring the country back to a particular moral and religious standard.

Textbook controversies arise in many settings. School officials assert their wisdom in educating the young. Elected officials often perceive of themselves as the conduits for transporting the community's values into the schoo's. Writers, editors, and publishers are gravely concerned with their freedom of expression and fear government efforts to eliminate particular ideas and perspectives from school classrooms. Parents have an interest in directing the upbringing of their children and in inculating particular secular and nonsecular values. Teachers and librarians assert rights to academic freedom, the right to be reasonably autonomous in carrying out their professional responsibilities. Students may assert a right to know, to read, to learn, or to acquire information, or a right not to be s bjected to materials they find fundamentally objectionable. Depending on your role in the education system, you may have a different perspective on who should decide about curricula and textbooks and how these decisions should be reached.

The inevitable question then is who determines what is to be taught in public schools, who does the necessary balancing. The answer, by and large, is that elected representatives, school board members, and school administrators make the choices, and are accountable to the citizenry for their performance. There is no necessary reason why affairs have to be arranged this way; many have proposed alternatives which would enhance, for example, the power of families to make educational choices. But these are our existing legal and institutional arrangements. As the Seventh Circuit recently stated in Zykan v. Warsaw Community School Corporation,

> (Public schools have a) broad formative role... (which encompasses) the encouragement and nurturing of those fundamental social, political, and moral values that will permit a student to take his place in the community ... As a result, the community has a legitimate, even a vital and compelling interest in "the choice (of) and adherence to a suitable curriculum for the benefit of our young citizens...
>
> Educational decisions necessarily involve choices regarding what students should read and hear, and particularly in light of the formative purpose of secondary school education, local discretion thus means the freedom to form an opinion regarding the instructional content that will best transmit the basic values of the community.

This necessarily puts the state in the business of editing the curriculum, including making selections of books for inclusion in the school library and for optional or required reading in designated courses. If no such authority existed, if disgruntled parents and others had a "right" to equal time to reply to the state's program, if public schools were public forums in the fullest sense of the phrase (like parks for example), the education mission of the schools, including acculturation, would become impossible. As a general matter, schools are not subjected to the various balancing of the message doctrines including fairness, a right to reply, equal time, and the like. As Professor (now Judge) Canby has stated,

> "...(E)diting is what editors are for; and editing is selection and choice of material." To forbid the managers of ...(public communication) enterprises to select material for inclusion and, necessarily, exclusion would for all practical purposes destroy these endeavors.

We are not talking about curriculum -- i. e., not the right to curriculum or courses, but about:

1) free exercise or establishment clause (prayer, evolution);

2) tailored exceptions by statute (sexes, gym);

3) nondiscrimination -- e. g., women and vocational education.

II. Delegation

To begin to understand how the law works with respect to book selection policies, you should realize that the state legislature could vote on each book to be used in every school in the state, applying its editorial judgments. But in the nature of things authority is delegated to state departments of education, state textbook commissions, local school boards, principals, and even the teachers and school librarians themselves. This delegation of authority is a bulwark we have against the centralized orchestration of a publicly established orthodoxy. Safety lies in keeping politicians too busy to intervene in daily decisions about book acquisitions or student newspaper articles, in the sense that professionals should make judgments, in custom and practice. What is to be feared is dilettante politicians and special interest groups with political muscle.

The concept of delegated editorial responsibility is a powerful one. Consider for example the doctrine of academic freedom for teachers. These cases seem difficult to justify, and the Supreme Court has never embraced the right explicitly and distinguished it from traditional First Amendment doctrine. Should the fortuity of speaking and teaching for a living entitle an instructor to some

special autonomy that other government employees do not share? Is it because they deal in words? And what of a librarian's asserted right to academic freedom? Why should a government employee who purchases books have any greater latitude than a government supply officer responsible for ordering paper and office equipment? Part of the answer, surely, is that books and words have a peculiarly important position in a democracy. But this could equally as well argue for greater supervision of teachers and librarians in public schools. What students learn is more important than which copying machine is purchased by a state highway department. And if the government is truly an editor, then why should not the government have the same rights of control in hiring and firing as private schools, newspapers, and broadcast stations?

The answer lies in the place which teachers and librarians occupy in the system of government expression, not per se in their own constitutional entitlements. The greater the ability of higher echelon officials to control what goes on in each school, school library, and classroom, the greater the danger of the promulgation of a uniform message to its captive listeners. If teachers were automatons required to adhere rigidly to lesson plans, book selections, and the like, ideological indoctrination might become a reality. If librarians were only responsible for processing book orders, with no discretion over what was ordered, the same risks might be incurred. In practice, varying discretion is given to teachers and librarians and the system works reasonably well. But what if editorial authority is not delegated to them? Is there a constitutional rule, derived from the First Amendment concern for

government established orthodoxy, that would require such delegations? No, there is not, but the school system must set down its rules in advance and make it clear that the central administration will decide and follow it. If, for example, a school board establishes objective rules in advance that allow it to make judgments about textbook and library acquisitions, and if the school board in fact makes such decisions over time, then their decision-making apparatus is not subject to constitutional attack on the ground that delegation and the division of authority over textbooks and library books is required. But you should be aware of the fact that there are some student newspaper cases that implicitly reach a contrary result. The conventional wisdom is that once a public school established a newspaper, although it need not have done so, it generally may not interfere with the editorial judgments of the student editors. And the cases do not appear to turn on how much editorial discretion was given the students or whether faculty supervision was established in advance by objective rules. This is wrong, I believe, and clear delineation of student/school responsibility in advance may help.

How then does one explain cases like Parducci v. Rutland in which Judge Johnson (Alabama) upheld the teacher's right to select a book for her students over the protestations of school authorities? Cary v. Board of Education, a recent tenth circuit case, begins to unravel the answer. Judge Logan, in referring to Parducci and similar academic freedom cases, noted that:

> The cases which held for the teachers and placed emphasis upon teachers' rights to exercise discretion in the classroom, seemed to be situations where school authorities acted in the

> absence of a general policy, after the fact, and had little to charge against the teacher other than the assignment with which they were unhappy.

Thus, if administrators or board members have no policy on book assignment or selection and thereby de facto delegate such authority to teachers and librarians, they cannot later intervene on an ad hoc basis to limit the dissemination of the books or their acquisition. Similarly, where school authorities have promulgated in advance a set of rules delegating authority to teachers, librarians, special textbook committees, etc., they will not be able to undo that delegation on a selective basis merely because they are dissatisfied with the results of that delegation in a particular instance.

In the Cary case from which I just quoted, the School Board had established a High School Language Arts Text Evaluation Committee to review materials for language arts courses. The Committee consisted of teachers, administrators, parents, and students and apparently was charged with reporting its book recommendations to the school board. The books were not to be purchased by the district but by individual students. Only one book was rejected by a majority of the Committee, but nine more were rejected in a minority report. The school board approved 1,275 books for the language arts classes, but rejected ten others -- six of which were listed in the minority report. The excluded books included Clockwork Orange (Anthony Burgess), The Exorcist (William P. Blatty), Coney Island of the Mind (Lawrence Ferlinghetti), and Kaddish and Other Poems (Allen Ginsberg). The court upheld the expulsion reasoning that if the board could decide not to offer contemporary poetry and if it could select the major textbook for the course, why could it not prevent the assignment of

other books? Further, the board established a review procedure and apparently the court concluded that it had abided by it.

The court in Salvail v. Nashua Board of Education relied heavily on the failure of the board of education to follow its own procedures in a decision to remove all and then parts of MS magazine from the school library. In that case, the board approved guidelines for the selection of instructional materials, delegating its editorial function to the "professionally trained personnel employed by the school district." The guidelines contained criteria for selection, including quality of presentation, appropriateness for age, subject, and ability levels, and literary quality. The guidelines also provided that the chosen books should help students be aware of the contributions of both sexes and of various religious, ethnic, and subcultural groups, and that on controversial issues, the collection should be balanced and insure the representation of various religious, ethnic, and cultural groups. In the event of a citizen complaint or question about book selection, the guidelines provided for appeals to an Instructional Materials Reconsideration Committee, with subsequent appeals to the superintendent and school board. By-passing these procedures, a board member presented a formal resolution to remove MS magazine from the school library and this was approved by the board despite the protestations of the superintendent that the established procedures should be followed. The court held that the board "was required to follow (the guidelines) in its attempt at removal of MS magazine from the shelves of the high school library." This conclusion of law was sufficient to support the court injunction against banning the magazine from the school library. It was

unnecessary for the court to address broader censorship issues, relating to whether the alleged "sexual overtones" of the magazine were simply a pretext for banning an objectional point of view.

III. Book Selection and Procedural Due Process

Fair procedures may avoid litigation or undermine its success. I have found only one case looking at such procedures, Loewen v. Turnipseed, a district court case arising in the Northern District of Mississippi. In that case, the "rating committee" appointed by the governor and State Superintendent of Education of Mississippi approved a book entitled Your Mississippi for purchase by the State Textbook Purchasing Board and disapproved a book entitled Mississippi: Conflict and Change. The books were considered for use in ninth grade classes in Mississippi history, and apparently the state would purchase approved books for both public and parochial schools. The controversy arose because Mississippi: Conflict and Change allegedly emphasized the mistreatment of blacks in Mississippi, while the alternative selection did not. The "rating committee" split on the issue, with the white majority outvoting the black minority. The court ultimately held that the selection was motivated by racial discrimination, intended to perpetuate segregation, and was therefore unconstitutional. This is obviously another area of sensitivity.

But along the way, the court held that the rating committee procedure for selecting textbooks was also unconstitutional. Mississippi law did not provide for review of the rating committee's decision "without giving those adversely affected by it a voice in

the matter." Since the publishers of the books were given an opportunity to present their positions to the committee, presumably the court had in mind the authors, students, faculty, and school districts across the state. And indeed they were the plaintiffs. Surely, governments are not required to hold a due process hearing everytime they wish to make a decision about funding research, purchasing a book, subsidizing the arts, or publishing a manuscript at the Government Printing Office. One tentative suggestion is that a distinction might be drawn between books that may be marketed only in schools, and those that have a more general market. That is, in the case of textbooks an adverse decision is financially devastating and the book is unlikely to be read widely. For novels by Graham Greene or Howard Fast the impact is far less grave. Thus, a hearing might be required for textbook selections, whereas it would not be required for the general run of books acquired by school libraries.

Finally, I cannot resist making one last point about the Loewen case. The court did not order the rating committee to alter its procedures to conform to its opinion. Rather, as in Cary, the court enjoined the defendants to approve Mississippi: Conflict and Change. The practical result of the case was that both books under consideration were approved, and that local Mississippi school districts and dioceses were free to choose the one that they preferred. This is indeed a Solomonic remedy -- good preventive law would have reached this result in the first place.

IV. Illicit Motivation

In a number of fascinating recent decisions, one of which is before the U. S. Supreme Court, circuit courts have sought to distinguish good faith pedagogic judgments about books from an effort to indoctrinate to a particular school of thought or political point of view. This is a task of immense difficulty, largely dependent on a motivational analysis. This is an area where judgment, good faith, and common sense may prevent lawsuits or at least adverse results. Perhaps the best exposition of the principle occurred in the Warsaw case:

> (T)he Constitution (does not) permit the courts to interfere with local educational discretion until local authorities begin to substitute rigid and exclusive indoctrination for the mere exercise of their prerogative to make pedagogic choices regarding matters of legitimate dispute.
>
> Noticeably absent from the amended complaint is any hint that the decisions of these administrators flow from . . . some systematic effort to exclude a particular type of thought, or even from some identifiable ideological preference.

Not surprisingly, the court remanded the case to allow amendment of the pleadings and presentation of evidence on the motivation issue.

The Warsaw case is rather complex. Essentially the student plaintiffs filed suit under Section 1983 alleging that their First and Fourteenth Amendment rights had been violated by a series of related school board decisions. Many of these were foolish. A textbook was removed from the school premises (values clarification) and given to a senior citizens group for public burning. Four books ordered for a

"Women in Literature" course (Growing Up Female in America, Go Ask Alice, The Bell Jar, and The Stepford Wives) were not permitted to be used. The school board, under a new policy prohibiting reading materials that might be objectionable, also excised portions of Student Critic and removed Go Ask Alice from the school library. Adding icing to the cake, the established school procedures for book selection decisions were not followed, seven courses were eliminated from the curriculum, and the English teacher who planned to offer the "Women in Literature" course was not rehired. The plaintiffs alleged that these actions were largely taken because particular words in the books offended the school board's social, political, and moral tastes. The court found this insufficient, however, because school boards are supposed to act on such tastes and beliefs in making book selection, curricular, and other decisions. In the court's words:

> The amended complaint nowhere suggests that in taking these actions defendants have been guided by an interest in imposing some religious or scientific orthodoxy to eliminate a particular kind of inquiry generally.

Apparently, if one is to credit the court's account of the case, plaintiffs erred in not specifically alleging that the board was attempting to eliminate feminist thought from the public schools. Defendants were lucky to reverse so sympathetic a hearing -- the case reaks of political decisions based on ideology and not good faith educational judgments about what is best for students.

From any reasonable perspective, Zykan illustrates the difference between censoring and editing and indicates how school authorities should not act. First, there was a series of related, but nonetheless

ad hoc determinations, which all pointed in the direction of eliminating feminist thought from the schools. Second, the book decisions clearly did not rest on considerations of economy or scarce resources. Third, the school board was not selecting among disciplines or subjects so much as it was addressing itself to a current political issue that cut across many disciplines. Fourth, the board failed to abide by its own procedures. Fifth, the removal of a book from the library and the nonrenewal of a teacher lends itself better to motivational analysis. In a sense, it is easier to figure out why someone was fired or why a book was removed than it is to determine why someone was hired among hundreds of applicants or why a book was not purchased from the thousands available. This is consistent with the Minarcini decision, distinguishing book acquisition and book removal policies.

The leading case on removal of books from public school libraries is Pico v. Board of Education, Island Trees Union Free School District, currently before the U. S. Supreme Court. Pico involves such outlandish and bizarre official behavior that it would be difficult (but not impossible) for any court to resist some form of intervention. It is a school board lawyer's nightmare -- whatever they did, don't do! The case involved the removal of ten books from school libraries, including The Fixer, Slaughterhouse Five, The Naked Ape, Soul on Ice, and others. As Judge Sifton noted with amusing understatement, this was accomplished through "unusual and irregular intervention in school libraries' operations by persons not routinely concerned with their contents." Three school board members had attended a conference sponsored by a right wing organization, and

obtained a copy of a list of objectionable books. The list was annotated with such remarks such as that particular books were seditious, disloyal, anti-white women, anti-Christian, and pro-feminist. Sensing an emergency, two of the board members gained entry to a school library at night and found most of the ten objectionable books in the card index files. Over the objections of the superintendent, the board then by-passed normal selection and removal procedures and banned the books. The removal became a cause celebre, and the incumbent board members were reelected, in part at least because of their stance on the book removal issue. After the suit was filed, defendants emphasized that their decision was premised on "the repellant and vulgar language present in the books." Not surprisingly, Judge Sifton did not believe them. Judge Newman was not sure, and he and Judge Sifton ordered the case remanded for full trial (the case arose as an appeal from the granting of summary judgment for defendants). Judge Mansfield dissented. The point here is that obscenity, if it is a part of educators' judgment, may be sufficient grounds for censoring (based on age, content, etc.).

Judge Sifton's opinion could not be more to the point. He did not for a moment deny the socialization function of public schools. And socialization inevitably involves the suppression of some facts and ideas. But his view was that the facts gave rise to "an inference . . . that political views and personal taste are getting asserted not in the interests of the children's well-being, but rather for the purpose of establishing those views as the correct and orthodox ones for all purposes in the particular community." Thus, it was clear that the defendants would not have removed the books but for the

desire to impose an orthodoxy and to suppress inconsistent ideas. The decision making process of the school system had been corrupted by an effort "to express an official policy with regard to God and country."

If the school board had been interested in an editing process designed to ferret out educationally inappropriate reading matter, many of the same books might well have been removed. But the similarity of impact of censorship and editing would not obviate a motive so patently inconsistent with First Amendment values. Judge Newman said much the same thing, opining that education may sometimes involve the suppression of ideas. But he could not accept such suppression "when exclusion of particular views is motivated by the authorities' opinion about the proper way to organize and run society in general." But given the defendants' formally expressed reasons for removing the books, he courteously insisted that a full trial was necessary "to determine precisely what happened."

Bicknell v. Vergennes Union High School Board was decided by the same panel, on the same day as Pico, and also involved the removal of books from the school library. This time, however, Judge Newman changed his vote and affirmed the lower court's dismissal of the complaint for failure to state a claim upon which relief could be granted. The defendant board had created a "School Library Bill of Rights for School Library Media Center Program" and this document gave the professional staff the 'right' to freely select, in accordance with Board policy, organize and administer the media collection to best serve teachers and students." If a complaint were received about

a staff book selection, the librarian was to attempt to resolve the matter. Any unresolved matters were for the board. Without following the procedure (a serious error), the board, upon complaint, removed Dog Day Afternoon and The Wanderers from the school library, asserting that they employed "vulgar and indecent language." The board also voted to prohibit the librarian from purchasing any additional major works of fiction, and required that library purchases in other areas be reviewed by both the school administration and the board. Subsequent to these actions, a number of students, parents, and library employees and the Right to Read Defense Fund brought suit.

While plaintiffs claimed that the board's action was motivated "by personal tastes and values," they did not assert that the removal of the books was motivated by political concerns. They admitted "that the books were removed because of vulgarity and obscenity."

V. Conclusion About Textbook Selection

In conclusion, I believe it remains an open question as to whether the sorts of lines which the Second and Seventh Circuits have sought to draw are workable or desirable. How does one know an "orthodoxy" when one sees one? Is not all education centered on establishing certain orthodoxies and editing out of the curriculum ideas and facts which are deemed wrong or unimportant by the community? To raise a specific example, the Pico, Bicknell, Zykan, and Salvail decisions all assume that the exclusion of sexually oriented books or books with dirty words is constitutionally permissible. But why is this not as much of an imposition of value

as is implicit in the exclusion of a feminist or a civil right's point of view? Is not the inculcation of standards of morality and sexual behavior one of the purposes of public schooling? If this is so, the Supreme Court may well reverse.

There is a great danger that courts will intrude too far into the curriculum of public schools, and that there will be a loss of accountability for book selection and removal decisions. At the moment, this danger seems remote. Whatever the articulated standard, plaintiffs have gained few victories. And a few well-publicized victories may well do more to influence school officials than a multitude of losses. But this suggests to me what everyone should realize. The primary restraints are political and attitudinal. Restraint depends on the independence of private publishers and their willingness to do political battle over their First Amendment beliefs. It depends on persuading public officials and the public itself that censorship is not the way. It depends on revitalizing our traditions of local control of education and on keeping state and federal governments as far removed as possible from school book decisions. In the last analysis, people will have the kind of schools that they want and deserve.

Regulation of Private Schools

In discussing states' regulation of private schools, we should first mention that many states are not involved in private school regulation. In looking at a case in which an Oregon law abolished public schools, the Supreme Court in 1925 reached the beginning

"Pierce Compromise." This decision basically stated that private schools cannot be abolished, but can be regulated and that the state can insure that private schools meet requirements similar to the public schools. This is still good law -- the rule is that you cannot abolish private schools but you can regulate them to a certain degree but not so much that they would in effect be public schools.

A lot of issues arose from the beginning of the "Pierce Compromise." These issues included the following: 1) How far can a state go in regulating private schools?; 2) How far is too far regarding parental rights?; 3) How far is too far regarding religious rights and free exercise rights?

Given these issues, how can we tie the idea of preventive law to the regulation of private schools? First, it is recommended that the delegation of authority by the state legislature not be too broad -- i. e., in legislating the regulation of private schools the language should be fairly specific. The legislation should say what criteria and standards the private schools are expected to meet. The courts seem to look for fairly specific language when assessing how far the state can legally go in regulating private schools.

Second, state boards of education should establish minimum educational standards for private schools, but should not specify everything completely. Private schools cannot be regulated to such an extent that they become de facto equivalents of public schools. Time must be left for the private school to fulfill its own mission.

Third, state education agencies should regulate the health and safety aspects of private schools. While they should also regulate

the educational purpose of private schools, those standards set should only be minimum ones to accomplish the purpose.

Finally, state education agencies must be very careful about the processes used in regulating private schools. This includes not only being careful about warning private schools of what is required of them, but also includes the evenness of control and application of rules for all schools equally. It is especially important that the application of rules appears to be objective and not based on any ideological biases.

ADVOCATE'S PERSPECTIVE ON P. L. 94-142: WHERE ARE THE TROUBLES COMING FROM? WHERE CAN WE GO FROM HERE?

by Jim Todd
Advocacy, Inc.

This view of preventive law regarding the implementation of P. L. 94-142 is from the perspective of the suer instead of the suee. The suer may be an advocacy agency for handicapped children, which is usually a publicly funded agency. The Developmentally Disabled Assistance and Bill of Rights Act of 1975 (DD Act) requires that every state which receives funding under the Act have a "Protection and Advocacy System (P & A)." Advocacy, Inc. is the P & A for Texas. Other agencies (such as Legal Aid and the American Civil Liberties Union) sometimes also pursue legal remedies for handicapped children. Most suits against school systems under P. L. 94-142 have had one of these advocacy agencies or other ones involved in the suit. Many suits could not be brought without advocacy agency assistance of some kind. Litigation brought by an advocacy agency often gives rise to a different client/attorney relationship than is seen in the public school system or in private practice. In the latter two situations, the legitimate role of the attorney is, after advising the client as carefully as possible as to the client's options and likelihood of success, to adopt the viewpoint of the client and to make the best case possible for it, regardless of the attorney's own personal viewpoint. An advocacy agency, however, often has a specific mandate -- such as to protect the rights of the handicapped -- so that it litigates on behalf of an individual client only when pursuing that client's aims will also fulfill the agency's mandate.

Advocates have an interest or stake in preventing litigation and other conflict in the education of the handicapped because they have other important issues on which they could focus if some problems could be resolved without litigation. Lawyers working with advocacy projects are more interested in seeing a handicapped educational system in place which does not require much litigation than in just representing a specific client.

While advocacy agencies would like to avoid litigation when possible, it should be remembered that they are ready, willing, and able to litigate when necessary. Preventive law is only possible for some areas. Some sources of conflict are not likely to be preventable. Examples include the following areas where one or both parties find litigation more desirable than resolving the problem:

> a. malice and spite - school district personnel deliberately determined to deprive child of rights; parents or advocates motivated more by antagonism, resentment, revenge, etc. than by sincere solicitude for interests of the child.
>
> b. legal crusade - school district's or parent's or advocate's desire to change the law outweighs the desire to achieve resolution with regard to individual child.
>
> c. obtuseness - though of normal intelligence and fully and adequately informed as to the law, school personnel, parents or advocates simply "don't get it."

Nevertheless, these sources of conflict, though widely attributed, are probably in reality exceptionally rare.

Because there are areas where preventive law is probably not possible, it is especially important to strive for preventive law in

areas where it is possible. In this way, energies and resources can be concentrated on the few questions that need to be litigated, rather than being squandered on issues that could be resolved by other means. Most controversies are probably preventable at a cost acceptable to both parties. Sources of conflict which probably are preventable follow (beware of their deceptive familiarity):

a. misunderstanding and lack of information. Six years after passage, P. L. 94-142 is still widely misunderstood among state and local special and regular education personnel, and among parents and some advocates.

b. mistrust. Often litigation occurs because parents and advocates do not feel they can have confidence in the outcome of any other process.

c. perceived lack of resources. Often state or local officials deny requests for services, either because they fear the system cannot afford it or because they think it will lead to future demands for services the system cannot afford.

An advocacy agency for handicapped children has more of a charge than just to serve parents' desires. Advocacy, Inc. is charged with protecting the rights of the developmentally disabled child or adult, regardless of what other party (parent or public agency) supports or opposes that objective. Advocates have actually prevented more litigation than they have brought. Before bringing a suit, the advocacy agency will decide if a legal right of a handicapped person is actually involved. For every case in which Advocacy, Inc. eventually litigates on behalf of a handicapped child against a public school system, there are scores of cases in which either Advocacy advises the parents that they are not entitled to what they are

seeking for their child (in most such instances, the case is not pursued further by the parents) or Advocacy assists in obtaining satisfactory results without adversarial conflict.

The following are suggested as ways state education agencies can help to prevent litigation regarding handicapped students:

a. Meaningful information, training, and "personal development" for both school personnel and parents should be provided using these methods:

   1) identification of gaps in understanding;

   2) reaching key people, e. g., school legal advisors, board trustees, etc.;

   3) using understandable and usable information and materials.

b. Credible alternative dispute-resolution mechanisms should be provided. I argue that truly impartial procedures, with meaningful enforcement, probably will vindicate most local districts on most issues most of the time, though not nearly as often as the current systems, which are heavily biased toward local school districts. If parents and advocates trust the alternative dispute-resolution procedures, they are much less likely to go to court when the decisions favor the school. The following methods should be tried:

   1) impartial due process hearings which remove public education officials, state or local, from any decision-making rule;

   2) optional mediation by skilled and credible people, an option with great potential (either ignored or abused thus far);

   3) "602" complaint procedures, another opportunity not yet fully exploited.

c. Resources should be provided in a way and with an attitude that can make a difference. Services should not be provided with the attitude that they are a special gift to which the recipient is not actually entitled.

d. Inter-agency relations and responsibilities should be clarified with cooperation to obtain the best services for handicapped children. Problems such as finger pointing, a child who "falls through the cracks," and the myth of agency autonomy linger on and will always need to be addressed.

SCHOOL DISTRICTS' PERSPECTIVE ON P. L. 94-142
WHERE ARE THE TROUBLES COMING FROM?
WHERE CAN WE GO BESIDES COURT?

by James W. Deatherage
Deatherage and Weaver, Attorneys

Introduction and Legal Framework

The legal framework governing the education of handicapped children is derived from three sources: (1) P. L. 94-142, Education of All Handicapped Children Act, and its implementing regulations; (2) Section 504 of the Rehabilitation Act, 1973, and its implementing regulations; and (3) state laws and state education agencies' rules and regulations.

These sources have established detailed legal procedures, i. e., due process hearings, in determining the rights of the handicapped student versus the responsibility of the public school to provide a free appropriate public education to the handicapped student. These due process requirements will enhance the educational program for the handicapped children. There is, therefore, built into the statutory and regulatory provisions a procedure for resolving conflicts which, in many instances, may encourage conflicts, due process hearings, and ultimate litigation. Until the courts have resolved these conflicts and educators learn how the courts interpret and construe the various statutory and regulatory provisions, a substantial amount of litigation is going to be involved; and we cannot, in exercising sound educational judgment and opinion, avoid a substantial amount of litigation. By the nature of the substantive and procedural rights

created, some litigation cannot be avoided.

Sources of Conflicts and Apparent Causes

A principal source of conflict and difficulty of implementing applicable laws and regulations involving handicapped children revolve around educators' lack of information and training concerning these provisions and their applications on the local level, i. e., the local educational agency.

The ambiguities in P. L. 94-142, as well as apparent conflicts with Section 504, are certainly a principal source of difficulty, conflicts, and causes thereof. What is an "appropriate" education? We have identified at least twenty-seven different uses of the word "appropriate". It is now being left to the courts to determine what constitutes an "appropriate" education. In Rowley v. Hendrick Hudson School District, the U. S. Court of Appeals indicated that "appropriate" may mean an educational opportunity commensurate to that of the non-handicapped. But there is still the question of whether the education should be provided to achieve the child's "potential" or "full potential". The U. S. Supreme Court has accepted Petition for Cert. in the Rowley case.

Other current issues in cases center around the areas of the provision of related services to handicapped children and the discipline of handicapped children.

Another principal source of difficulty and conflict involves the content of the I. E. P. The exact contents of this document and the specificity thereof provoke many questions, disagreements, and

resulting litigation.

The content of the I. E. P. should at least contain goals and objectives which can be measured. Too often, the educators are deficient in drafting goals and objectives which can stand the scrutiny of objective measurement. As a result, the parent does not understand and becomes unhappy with the child's progress, and litigation results.

Preventive Actions

Although conflict and litigation may be inherent in educating handicapped children, there seem to be several ways in which these conflicts can be lessened, and perhaps some of them avoided.

1. The Education of Educators: Informing and educating professional educators is a principal method which can and should be utilized which would result in fewer conflicts. Many school superintendents and other school personnel, even special education personnel, have heard little, if anything, of Public Law 94-142 or Section 504 of the Rehabilitation Act. Discrimination of information and a continuing education process from the state education agency is needed to educate local public educational personnel which probably must be organized and presented at the state level.

2. Proper Development of the I. E. P.: Since the state has primary enforcement obligations and is required to monitor the implementation and application of P. L. 94-142 on the local level, it needs to consider doing substantially more to insure the development of sufficient and appropriate I. E. P.'s by local educators. The following are some common mistakes in I. E. P. content which could be

prevented by appropriate monitoring and continuing education:

A. The wrong personnel are often involved in the decision-making.

B. The evaluation data by which a child is assessed are often out-of-date and inappropriate, resulting in insufficient educational assessment and, therefore, insufficient I. E. P.'s.

C. Many I. E. P.'s are missing certain elements which are essential and which are required by P. L. 94-142.

D. Where is the child at each minute of the day, including everything from recess to special services?

E. Is the academic program being recommended comparable to the school's regular academic program?

F. How are the instructions specially designed to meet the child's unique needs?

G. Insufficient description of frequency and duration of related services to be afforded, and whether they will be afforded individually or in a group. What other placement opportunities or alternatives really exist that were considered for the child?

H. What opportunity is provided for the child to have contact with the non-handicapped?

I. What disciplinary sanctions are appropriate or inappropriate based upon predictable behavior?

Considering these questions and problems and approaching their solutions will alert parents and school personnel to potential misunderstandings and problems which can be solved before conflict and hearings result.

3. Forecasting and Trend Recognition: School districts could often avoid conflicts if they would stay abreast of development in this area of educating handicapped children, thereby becoming more knowledgeable of the consequences of their actions, and see implications resulting therefrom, planning their actions and decisions accordingly before-the-fact instead of after-the-fact.

4. Evaluation and Assessment: Use of better methods and more appropriate use of evaluation and assessment tools currently available could substantially lessen conflicts and misunderstandings between the school personnel and the parents involving the education of the handicapped child. Since development of the I.E.P. and placement of the child must be based upon current educational evaluation and assessment, this area of providing an appropriate education for the child cannot be over-emphasized.

Alternatives to Litigation

Some suggested alternatives and approaches include the following:

1. Inter-agency Agreements: Inter-agency agreements at the state level are necessary. Although the state education agency administers a substantial part of the total educational programs for handicapped children, other state agencies are under legal responsibilities steming from qualifying for other federal financial assistance in programs they are charged with administering in this state. An obvious example involves the Department of Mental Health/Retardation and the Texas Education Agency.

2. Educator Awareness: Litigation is discouraged when school personnel and parents are well educated concerning alternatives and provisions available for the education of the child. By doing so, the school personnel will have better performed their responsibilities and be in a better position to defend themselves, and thus the parent will tend to be less likely to ligitage the issue in conflict.

3. Mediation: Developing a procedure for "ediation short of due process hearings has not been explored to any substantial degree, at least on the state level. The state educational agency should be able to determine those issues that can be mediated, develop regulations and procedures providing for mediation, and assist the local public educational agency in the mediation process.

In conclusion, there will continue to be, at least for a while, considerable litigation involving the education of the handicapped children. A great deal of "lawyering" is needed and will continue to be needed in the drafting of future educational legislation, regulatory provisions, and the education of their clients in order to prevent or lessen the amount of litigation in which we all are involved.

GROUP INTERACTION AND CONSENSUS BUILDING

Group discussions during the institute came a long way toward clarifying many of the issues brought out by presentors and made some real progress toward reaching consensus regarding potential solutions to many of the problems raised.

While it is not possible to recount here a full version of the interactions, some of the major topics have been selected to capture the essence of the discussions. As different participants often built on each others' comments, no attempt has been made to attribute ideas to the individual participants.

The major topics of discussion seemed to cluster around three issues reflecting the topics of presentation: 1) whether lawyers should be brought into the decisionmaking process early on; 2) the regulation of private schools; and 3) implementation of P.L. 94-142.

In grouping the essence of the comments around these three topics, I found that for each topic several problems were considered and for each several solutions were contributed, as seen below.

Bringing Lawyers into the Decisionmaking Process Early On

The Problems

While it has been argued that lawyers should be brought into the educational decision-making process early on, there is a question as to whether the legal aspects of the policy might take on a life of their own if this is done. If the legal aspect does predominate, the policy may fail to include all the critical variables important to

the impact of the policy being considered. Another issue related to this problem is that consistency and standardization are important for lawyers, whereas for educators, tailoring each case to individual characteristics is more important. Thus, the client and attorney may have different philosophical orientations. Evasion is another problem which must be considered when thinking about bringing in lawyers early on. One man's wisdom may be another man's loophole. Finally, it is sometimes difficult to bring a lawyer in early to much avail because some states do not have a record of due process hearings on which to help guide their clients.

On the other hand, if educational decision-makers expect to write a law that both incorporates the desires of the client and has some chance of passage and enforcement, a lawyer needs to be called in early. Educators often talk as if policies are a panacea to problems and will prevent litigation, when in fact, the more laws and policies there are, the more litigation there is likely to be.

Suggested Solutions

One possible solution to this problem of whether or not the lawyer should be brought in early on in the educational decision-making process is for educators and lawyers to become clear from the beginning about what the attorney's role is to be. A client may begin depending on the attorney too much and actually start delegating policy-making to the attorney as well as expecting legal advice. Attorneys should not try to usurp the policy process, but should determine the legal bounds within which there is a range of

policy alternatives. The attorney should also help educate the policy-maker about legal issues so that more of the decision-making will occur with an understanding of the legal ramifications and constraints.

In conclusion, there may be some contexts for issues when it is desirable to call a lawyer in early and others when it is not. The most important time to call a lawyer in early is in legislative drafting when passage and enforcement of the policy are extremely important issues. It should also be remembered that once a policy is in place, it is extremely important that it be enforced.

Private School Regulation

The Problems

States are often complaining about how volatile some issues are at present, such as lack of confidence in public education and resistance to regulation of private schools. Instead of more regulation on private schools, many states are leaning toward less or even no regulation of private schools. Some states report that fundamentalists or other groups actually desire confrontation because they know they have the upper hand. In many cases, regulation of private schools is thought to be sheer politics.

Nevertheless, since states are charged with the responsibility of educating children, it would seem that they have a right to know if children are in school and if their education meets specified minimum standards.

Suggested Solutions

In thinking about preventive law as it relates to private school regulation, it is a mistake to equate side-stepping the issue with preventive law. It should be remembered that while certain kinds of litigation probably cannot be prevented, taking insulating procedures such as following regular processes in making decisions can go a long way in helping to prevent litigation.

Other ways to apply the concept of preventive law to private school regulation include regularizing the standards set for private schools and establishing these standards early on and following through by enforcing the policies and standards as closely as possible.

Implementation of P.L. 94-142

The Problems

Many problems regarding the implementation of P.L. 94-142 were recognized by participants. Following is a collection of the many problems discussed:

1) Interagency agreement has become a big problem in some states regarding the implementation of services to the handicapped. This is an issue which really needs to be addressed at the state level because it is there that funding is being controlled.

2) P.L. 94-142 is part educational funding statute and part civil rights statute. This has accounted for numerous problems. The drafters of the educational part may have intentionally left

interpretation up to local stakeholders. This, of course, left the legislation wide open to litigation. Another problem regarding the way the statute was written is that local agencies have a clear reason not to interpret it broadly because they do not have the funding to implement a broad interpretation. Also relating to the confusing nature of the statute is that many school superintendents sign a contract in order to receive P. L. 94-142 funding without even thinking about what obligations they are agreeing to.

3) The professional special educator is often put on the spot because of being required to act in the best interest of the child, based on an assessment of that child, even when the parent disagrees with the actions to be taken.

4) Competency testing and the I. E. P. will probably become a greater problem now that 37 states have competency tests. The effects these competency tests will hgave on special education students must be determined and parents must be informed regarding the effects.

5) Parents may often feel like they are bombarded with various authorities and have no sense of what the hierarchies are among the authorities to know how to deal effectively with them.

Suggested Solutions

1) Now, while advocates and educators have a common foe in some of the anti-public education groups, is a good time to try to come together to work for common goals and resolve some of the problems.

2) Several commonly held solutions emerge to help incorporate preventive law into enforcement of P. L. 94-142. They include the following:

a) More information is important. The information process varies from state to state and may depend on the types of networks in place. Face to face contacts and personal communications are important as Louisiana and New Mexico have demonstrated with their successful approaches. It may be that there is enough information, but that there is not enough selectivity in the information provided. Groups such as the Education Commission of the States are playing an information role regarding the implementation of P.L. 94-142.

b) More trust is also important. If parents who have a vague feeling about something not being right with the education of their special education child had more trust in the processes used to resolve this uneasy feeling, less litigation would be probable.

c) Interagency agreements are very important in trying to provide overall services to special children and adults. It may be necessary for interagency cooperation to begin at the state level and work down toward the local level.

d) Mediation processes and complaint management systems can also be very useful. Diplomacy is used in finding out

what things each stakeholder wants to protect and determining what common grounds there may be. Usually there is plenty of room for differences of opinion if there is a process by which both parties feel their problem can be fairly addressed. Issues which are most apropriately subject to mediation are the following:

- The really gray issues related to the I. E. P.
- Goals and objectives of the I. E. P. which should be stated in a way that allows them to be measured.
- When the two parties are close to an agreement but personality conflicts, etc. get in the way, a third party could mediate.

e) Look ahead to the implications of other policies on handicapped children (such as competency testing) and try to develop a policy now and inform local areas and parents so that they can incorporate new items into the I. E. P., etc.

CONCLUSION

In public education today, more and more resources are being devoted to legal questions as the field becomes more densely covered by legislation, regulations, and policies at every level.

The thesis of this institute on preventive law for educators was that there is a critical need to bring the various stakeholders in the education process together to examine issues of importance to the many groups before the issues become crises. Being able to examine an issue while there is the leisure to do so will help prevent education agencies from operating as "fire fighters" running in place. It will free them to look ahead to the future and allow them greater opportunities to be in control of their futures instead of merely reacting to them.

Certain categories of litigation are probably preventable. These include such areas of the following: 1) issues about which there is no substantial disagreement over the nature of services to be provided, but only over the amount of service or type of person to provide it; 2) policies which unintentionally violate a group's constitutional rights; 3) issues where legal counsel and policy-makers have time to seek acceptable solutions before the issue becomes a conflict; and 4) issues based on mistrust due to a process being followed which could be changed to make both parties feel they could negotiate their differences in a fair manner without going to the extreme of litigation.

Finally, the importance of the clarification and effective dissemination of information deserves special attention as does the

clarification and common understanding of the goals and values of the various participants in the educational process. The concept of preventive law lies at the heart of the educational policy-making process. This process is probably best perceived as both the art and craft for choosing among alternative sets of actions within broad guidelines in order to create the kind of future we desire for our country in the area of education.

The practice of preventive law will help us not only in better defining the broad guidelines within which our alternatives lie, but also by spurring us to examine reactions of various stakeholders to alternatives. This practice will help us to come up with policies which are better accepted, more feasible, and therefore, more implementable.

AGENDA

9:30AM	Coffee and Rolls
10:30AM	Welcome: DR. MARTHA L. SMITH, Director, Regional Policy & Planning Projects Special Guest: DR. RICHARD A LALLMANG, Project Officer, National Institute of Education Introductions: CYNTHIA Y. LEVINSON, Policy Analyst, SEDL
10:45AM	"Defining Preventive Law," CHRISTIANE HYDE CITRON
11:00AM	"State Regulation of Textbook Selection and Private Schools," MARK YUDOF
11:45AM	Break
12:00PM	Group Response and Discussion CYNTHIA Y. LEVINSON, Facilitator
1:00PM	Lunch, T. J. Peppercorn's
2:00PM	"P. L. 94-142: Where are the Troubles Coming From? Where Can We Go Besides Court?" Advocate Perspective JIM TODD School District Perspective JAMES W. DEATHERAGE
3:00PM	Group Interaction CHRISTIANE HYDE CITRON, Facilitator
4:30PM	Evaluation and Adjournment MARTHA L. SMITH

THE PRESENTORS

CHRISTIANE HYDE CITRON joined the Law and Education Center of the Education Commission of the States as Senior Attorney after six years in private legal practice. She has written articles on law and education and on preventive law; she has specialized in law pertaining to education of the handicapped. Ms. Citron has also been active in environmental and arts projects.

JAMES TODD prepared for his position as staff attorney at Advocacy, Inc. and his work with developmentally disabled persons through both legal training at the University of Texas and attendance at the University of Houston Graduate School of Social Work. He has taught on Law and the Handicapped and Law and Psychology.

JAMES W. DEATHERAGE, partner in Deatherage and Weaver, is a member of the Executive Committee of the National Association of School Boards Council of School Attorneys and immediate past-Chairman of the Texas Association of School Boards Council of School Attorneys. He is also Vice President of the Board of Consulting Educators, Inc. and was recently appointed to a two-year term on the Governor's Education Action Group.

MARK YUDOF has written extensively on education and the law, including in the areas of school finance, desegregation, censorship, due process, discipline and dispute resolution. He teaches Education Policy and the Law and Children and the Law and serves, among other distinguished activities, as Vice-Chairman of the Education Law Section of the American Association of Law Schools.